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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,925	07/23/2001	Ashar Aziz	55218-0511	4906
29989	7590	08/16/2005	EXAMINER	
HICKMAN PALERMO TRUONG & BECKER, LLP 2055 GATEWAY PLACE SUITE 550 SAN JOSE, CA 95110			FELTEN, DANIEL S	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/911,925

**Applicant(s)**

AZIZ ET AL.

**Examiner**

Daniel S. Felten

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36, 39 and 41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36, 39 and 41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/16/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

S.O.O.

## **DETAILED ACTION**

1. Receipt of the Amendment filed April 29, 2005 canceling claims 37, 38 and 40 and amending claims 1, 3, 4, 6, 7, 19, 21, 22, 24, 25, and 39. Claims 1-36, 39 and 41 remain pending in the application and are presented to be examined upon their merits.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on May 16, 2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Withdrawal of previous 35 USC § 112 Rejection***

3. Claims 1-41 were rejected under 35 USC § 112 Rejection, second paragraph for being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant has amended the claims to over come these rejections. Thus the 35 USC § 112 Rejections from the previous office action are withdrawn. However, applicant's amendment filed April 29, 2005 has incurred subsequent rejections under this statute which are addressed below.

### ***Response to Arguments***

4. The applicant has made asserted that the Crooks et al ("773") reference does not teach, "determining usage data that indicates usage, by the customer during a specific period of time, of

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a set or one or more resources assigned to a customer, where over time, resources *may be de-allocated from* the set of one or more resources assigned to the customer and additional resources *may be* allocated to the set of one or more resources assigned to the customer from a plurality of resources,” 773 provides an audit process to securitize resource usage information to ensure that the information utilized to generate the computer viewable data is with acceptable tolerance levels (see col. 8, ll. 50-57). The examiner has interpreted the ability to scrutinize the resource usage information to be within acceptable levels to suggest that resources may be increased or decreased so that they certain tolerance levels are met. Thus it is respectfully submitted that when resources are decreased to meet the tolerance levels, this is a “de-allocation” of resources. Thus 773 suggests the amendments put forth in the amendment of April 29, 2005 and are presented within the rejections below.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-36, 39 and 41 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for allocating resources, does not reasonably provide enablement for de-allocating resources from a set of resources assigned to the customer. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to know exactly how a “de-allocation of resources” is performed within

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the invention, or what technology is used to perform this function. Is this function performed by the Virtual Server Farm or some other another computer?

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-36, 39 and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Is the de-allocation of resources a reassignment or redistribution of resources, or is de-allocation a removal of resources? What is the effect of the de-allocation on the usage data

and/or the value data? Basically, what do you mean when you say, "resources may be de-allocated? Also the use of "may be" should be changed to "is" because to say that the resource "may be" de-allocated is not definite.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 1-36, 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,930,773 hereinafter 773) in view of Crooks et al (US 5,943,656 hereinafter 656).

***Re claim 1:***

773 discloses wherein a customer request for downloading information, a file is sent containing the bill date, bill identifier, site identifier, service code, consumption amount and unit of measurement, dollar amount, /r, and various miscellaneous charges (see 773, \*1. 5, 11. 2 1+). However, 773 fails to disclose that the 773 system is "determining" the amounts to be billed to the customers. 656 determines the amounts to be billed by customers by a consolidation of bills (see 656, col. 6, 11. 9+). Since 773 is concerned with providing data related to charges made to a customer for usage of certain resources which are accessed and downloaded remotely (see 773, Abstract; and col. 5, 11. 21+), it would have been obvious for an artisan at the time of the invention to integrate the consolidation bill feature into 773 because an artisan at the time of the invention of 773 would recognize that such a feature would provide the customer with the ability to electronically pay several bills at the same time from a remote location. Thus the ability of saving time and money ( postage mailing) would have been recognized by 773 and have made the integration of the aforementioned feature obvious.

773, discloses a set of one or more de-allocated from the set of one or more resources assigned of the customer and additional resources may be allocated to the set of one or mores resources assigned to the customer...value data that specifies a number of service units that each resource form the set of one or more resources is capable of providing per unit time (see Response to arguments above).

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11. Claims 2-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crooks et al (US 5,930,773 hereinafter 773) as modified by in view of Crooks et al (US 5,943,656) hereinafter 656) as applied to claim 1 above, and further in view of Aziz et al (US 6,779,016)

***Re claims 2-18:***

773 as modified by 656 discloses computerized network systems over the Internet (see 773, figs. 4 & 7, 47, col. 5, 11. 31+, and 656, fig. 4, col. 3, 11. 1+), but fails to disclose a Virtual Server Farm ("VSF"). Aziz discloses a VSF (see Aziz Abstract). In view of Aziz one of ordinary skill in the art at the time of the Crooks invention (773, 656) would have recognized and have been familiar with the notoriously old and well known problems of ever changing traffic capacity" and the need to account for changes in traffic capacity, as enunciated by Aziz (see col. 2, 11. 37+). Therefore, because both 773 and 656 discuss a multi-user system of customers and billers accessing a host computer over the Internet, it would have been obvious for one of ordinary skill in the art to make use of the latest network technology to address the notorious old and well known issues enunciated by Aziz. Thus such a modification would be an obvious extension of the teachings of 773 as modified by 656 to provide readily accessible billing and payment resources and utilities over the network (Internet).

The concept of a "reservation fee" is notoriously old and well known in the art to be used to hold something for a period of time. Therefore Official Notice is taken of a reservation fee since such a fee could be considered an obvious extension to the teachings of 773 as modified by 656 from the perspective of the customer being able to hold certain limited resources for a time before they

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are put to use. For example, reservation fee could be used for resources of a Pay-per-view or a cable Tv program. Thus the charging of such a fee would be obvious.

***Re claims 19-36:***

(see explanation of claim 1)

***Re claims 37 and 38:***

(see explanation of claim 1).

***Re claims 39-41:***

(see explanation for claim 1)

***Conclusion***



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12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Felten whose telephone number is (703) 305-0724. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DSF  
July 22, 2005

Daniel S Felten  
Examiner  
Art Unit 3624

